

STATE OF MICHIGAN  
COURT OF APPEALS

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MOSES MOSS,

Plaintiff-Appellant,

V

WENDELL M. DAVIS, MORRIS GOODMAN,  
MOLLEY EKLUND-EASLEY and GOODMAN  
EKLUND-EASLEY & DAVIS,

Defendant-Appellees.

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UNPUBLISHED

October 23, 2003

No. 240499

Wayne Circuit Court

LC No. 00-007623-MN

Before: Wilder, P.J., and Griffin and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition, pursuant to MCR 2.116(C)(10), in favor of defendants of his legal malpractice claim. We affirm.

Plaintiff first claims that the evidence created a genuine issue of material fact that but for defendant Davis' alleged malpractice, the outcome of his claim against MetLife would have been different. Specifically, plaintiff argues that MetLife would not have decided to terminate his benefits had defendant Davis obtained and submitted evidence that his treating physician, Dr. Panugh, had concluded that plaintiff suffers from a total physical disability due to the severity of his arthritic disc disease. We disagree.

We review a motion brought under MCR 2.116(C)(10), which tests the factual support of a plaintiff's claim, de novo. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999); *Spiek v Transportation Dep't*, 456 Mich 331, 337; 572 NW2d 201 (1998). "In deciding a motion pursuant to subrule (C)(10), the trial court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists to warrant a trial." *Id.* When opposing a summary disposition motion brought under MCR 2.116(C)(10), the party opposing the motion has the burden of establishing that a genuine issue of disputed fact exists. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The plaintiff may not rest upon mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635 NW2d 69 (2001).

“In order to establish a claim of legal malpractice, a plaintiff must prove (1) the existence of an attorney-client relationship, (2) negligence in the legal representation of the plaintiff, (3) that the negligence was the proximate cause of an injury, and (4) the fact and extent of the injury alleged.” *Estate of Mitchell v Dougherty*, 249 Mich App 668, 676; 644 NW2d 391 (2002), citing *Charles Reinhart Co v Winiemko*, 444 Mich 579, 585-586; 513 NW2d 773 (1994). Plaintiff asserts that defendant Davis’ alleged malpractice caused him to incur damages. “[T]o prove proximate cause a plaintiff in a legal malpractice action must establish that the defendant’s action was a cause in fact of the claimed injury.” *Winiemko, supra*, 444 Mich 586. “Hence, a plaintiff ‘must show that *but for* the attorney’s alleged malpractice, he would have been successful in the underlying suit.’” *Id.*, quoting *Coleman v Gurwin*, 443 Mich 59, 64; 503 NW2d 435 (1993) (emphasis added). “To hold otherwise would permit a jury to find a defendant liable on the basis of speculation and conjecture.” *Winiemko, supra*, 444 Mich 586-587, citing *Coleman, supra*, 443 Mich 65.

The record contains no testimony or documentary evidence supporting plaintiff’s assertion that Dr. Panugh’s opinion would have resulted in a different determination by MetLife. To the contrary, the record shows that MetLife had considered Dr. Moret’s opinion that plaintiff’s condition was chronic and permanent and that plaintiff suffered a “total physical and mental disability,” additional medical information submitted by plaintiff, and the results of independent evaluations conducted at MetLife’s request, and concluded that “the medical information supports a mild impairment that would not preclude gainful employment in the light to medium duty range.” Viewing this evidence in the light most favorable to plaintiff, we find no error in the trial court’s determination that summary disposition was warranted because there was no genuine issue of material fact.

Defendant next asserts that his denial of benefits claim under the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.*, would not have been summarily dismissed by the federal district court had defendant Davis submitted Dr. Panush’s opinion as evidence in the district court proceedings. Again, we disagree.

In considering whether MetLife’s decision to terminate benefits was appropriate, the district court was required to apply an arbitrary and capricious standard of review.<sup>1</sup> Under an

<sup>1</sup> In evaluating a denial of benefits claim under the Employee Retirement Income Security Act (ERISA), 29 USC 1001 *et seq.*, the standard to be employed is a “de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine the eligibility for benefits or to construe the terms of the plan.” *Firestone Tire and Rubber Co v Bruch*, 489 US 101, 115; 109 S Ct 948; 103 L Ed 2d 80 (1989). If the plan gives the administrator such discretion, then the district court applies an arbitrary and capricious standard of review to the administrator’s decision to terminate benefits. *Administrative Committee of the Sea Ray Employees’ Stock Ownership and Profit Sharing Plan v Robinson*, 164 F3d 981, 985 (CA 6, 1999); *Miller v Metropolitan Life Ins Co*, 925 F2d 979, 984 (CA 6, 1991). “An ERISA benefit plan administrator’s decisions on eligibility for benefits are not arbitrary and capricious if they are ‘rational in light of the plan’s provisions.’” *Miller, supra*, 925 F2d 984, quoting *Daniel v Eaton Corp*, 839 F2d 263, 267 (CA 6, 1988). In this case, because the terms of the MetLife plan clearly provides MetLife with discretionary authority to interpret the terms of the plan and to determine eligibility for and entitlement to benefits under the plan, the district court was limited to an arbitrary and capricious standard of review. *Sea Ray, supra*, 164 F3d 985.

arbitrary and capricious standard, so long as there is a rational basis for MetLife's decision, the district court was required to uphold it. *Miller, supra*, 925 F2d 984. We find that, viewing the evidence in the light most favorable to plaintiff, there was insufficient evidence to establish a genuine issue of material fact that MetLife's decision was arbitrary and capricious. A rational basis exists for MetLife's determination, despite Dr. Panush's contrary opinion.

Given our resolution of the above issues, we need not address the remaining issue raised by plaintiff on appeal.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Richard Allen Griffin  
/s/ Hilda R. Gage